

**ILLINOIS COMMERCE COMMISSION
DOCKET 03-0239**

**REPLY TESTIMONY OF
SCOTT FINNEY, JOHN D. SCHELL, JR. AND
DAVID L. TALBOTT**

**ON BEHALF OF
AT&T COMMUNICATIONS OF ILLINOIS, INC.,
TCG ILLINOIS AND TCG CHICAGO**

ATTCI EXHIBIT 2.12

ISSUES:

**INTERCONNECTION 1, 5, 6,7, 9
INTERCARRIER COMPENSATION 2a, 2b, 2c, 2d, 2e, 9**

JUNE 11, 2003

I. INTRODUCTION OF WITNESSES

1. Q. MR. FINNEY, PLEASE STATE YOUR FULL NAME, PRESENT POSITION, AND BUSINESS ADDRESS.

A. My name is Scott Finney. I am a District Manager in AT&T's Local Services and Access Management for the SBC Region. My business address is 222 West Adams Street, Chicago, Illinois.

2. Q. MR. SCHELL, PLEASE STATE YOUR FULL NAME, PRESENT POSITION AND BUSINESS ADDRESS.

A. My name is John D. Schell, Jr. In June 2001, I was employed by AT&T as a contract employee in the Local Services Access Management group in AT&T Network Services. My business address is 3033 Chain Bridge Road, Oakton, Virginia 22185.

3. Q. MR. TALBOTT, PLEASE STATE YOUR FULL NAME, PRESENT POSITION, AND BUSINESS ADDRESS.

A. My name is David L. Talbott. I am employed by AT&T in the Local Services Access Management group in AT&T Network Services as a district manager. My business address is 3737 Parke Drive, Edgewater, Maryland 21037.

4. Q. HAS THE PANEL PREVIOUSLY SUBMITTED DIRECT TESTIMONY AND EXHIBITS IN THIS PROCEEDING?

A. Yes, we previously submitted prepared direct testimony identified as AT&T Exhibit 2.0 along with additional exhibits identified as AT&T Exhibits 2.1 through 2.11.

23 **5. Q. WHAT IS THE PURPOSE OF YOUR REPLY TESTIMONY?**

24 **A.** We are responding to the Verified Statement of Commission Staff witness Dr.
25 Zolnierек on Issues Interconnection 1, 5, 6, 7 and 9 and Intercarrier
26 Compensation ("IC") 2a, 2b, 2c, 2d, 2e, and 9.

27 **II. INTERCONNECTION ISSUES**

28

Issue Interconnection 1. Where SBC elects to subtend another LEC's tandem switch,
29 **may AT&T interconnect indirectly to SBC via such tandem? (Article 3, Section 3.2.5.1)**

30 **6. Q. DO YOU AGREE WITH STAFF WITNESS DR. ZOLNIERЕК'S**
31 **RECOMMENDATION TO THE COMMISSION ON**
32 **INTERCONNECTION ISSUE 1?**

33 **A.** Generally, yes. Dr. Zolnierек correctly states that (1) there is no Commission or
34 FCC rules that prohibit indirect interconnection between SBC and AT&T, (2)
35 such arrangements are technically feasible, and (3) AT&T, as a new entrant, has
36 broad rights to elect efficient interconnection. However, Dr. Zolnierек rejects
37 AT&T's proposed language for Section 3.2.5.1 and provides new language to
38 implement his recommendation. While AT&T generally agrees with Dr.
39 Zolnierек's recommendation, we believe that the contract language submitted by
40 AT&T better implements Staff's recommendation than does Staff's proposed
41 language.

42 **7. Q. WHAT PROBLEMS ARISE IN STAFF'S ANALYSIS?**

43 **A.** There are three problems in the analysis articulated by Staff. First, Dr. Zolnierек
44 asserts that AT&T's proposed language, "could be interpreted to require SBC to

provide AT&T interconnection outside SBC's incumbent LEC network."¹ An examination of AT&T's proposal shows that it does not so obligate SBC, and in any event, that was not our intent. Second, Dr. Zolnierrek asserts that AT&T's proposed language, "could be interpreted to impose obligations on third party tandem providers."² However, AT&T's language does not obligate third parties in any way, and again, it was not our intent to do so. Third, Dr. Zolnierrek incorrectly assumes that, under indirect interconnection, AT&T and SBC would have a POI where the two parties exchange traffic. This is not correct. Under indirect interconnection, the AT&T and SBC networks would not directly interconnect.

8. Q. WOULD YOU PLEASE RESPOND TO STAFF'S ASSERTION THAT AT&T'S PROPOSED LANGUAGE, "COULD BE INTERPRETED TO REQUIRE SBC TO PROVIDE AT&T INTERCONNECTION OUTSIDE SBC'S INCUMBENT LEC NETWORK"?

A. Dr. Zolnierrek observes that "current rules do not require incumbent LECs to provide requesting carriers the opportunity to interconnect at points outside the incumbent LEC's network."³ However, he fails to note that indirect interconnection between AT&T and SBC would not require SBC to provide AT&T the opportunity to interconnect at points outside SBC's network. Where SBC elects to subtend another ILEC's tandem, SBC must be interconnected with

¹ Verified Statement of James Zolnierrek, page 25.

² *Id.*

³ *Id.* page 24.

65 that carrier's network (i.e., the transiting carrier's network) and SBC must
66 establish a POI between SBC and the transiting carrier. Where AT&T and SBC
67 interconnect indirectly, as AT&T proposes under this issue, AT&T and SBC
68 would utilize the POIs each has with the transiting carrier. In such a case, AT&T
69 would not have a (direct) POI with SBC, because AT&T would not be
70 interconnecting directly with SBC. Rather AT&T would exchange traffic with
71 SBC utilizing the POI AT&T has established with the transiting carrier and the
72 POI that the transiting carrier has with SBC *that lies within SBC's territory*.
73 Accordingly, the first basis for Staff's rejection of AT&T's proposed language is
74 not valid.

75 **9. Q. WOULD YOU PLEASE RESPOND TO STAFF'S ASSERTION THAT**
76 **AT&T'S PROPOSED LANGUAGE, "COULD BE INTERPRETED TO**
77 **IMPOSE OBLIGATIONS ON THIRD PARTY TANDEM PROVIDERS"?**

78 **A.** AT&T agrees with Staff that, "It is also self evident that AT&T should not have
79 the right to require tandem providers that are not a party to this agreement to
80 make their tandems available in this interconnection agreement."⁴ AT&T
81 understands and agrees that it must interconnect with the transit provider in order
82 to transit traffic to SBC and that this agreement will in no way obligate the transit
83 provider to provide such services. There is nothing within AT&T's proposed
84 language under Section 3.2.5.1 that would obligate the transit provider in any

⁴ *Id.* page 24.

85 way. Accordingly, the second basis for Staff's rejection of AT&T's proposed
86 language is similarly not valid.

87 AT&T's proposed language would only obligate SBC to exchange traffic
88 with AT&T via the transit provider (that SBC itself elects to subtend) if and when
89 AT&T does interconnect with the transit provider. Without the contractual
90 obligation on SBC to provide indirectly interconnection that AT&T seeks under
91 this issue, SBC has made it clear that it would not exchange traffic with AT&T
92 indirectly as is AT&T's right under the law, a right that Staff acknowledges.

93 **10. Q. WHY IS AT&T'S PROPOSED LANGUAGE FOR SECTION 3.2.5.2**
94 **SUPERIOR TO STAFF'S RECOMMENDED LANGUAGE?**

95 First, Staff's proposed language incorrectly assumes that AT&T and SBC share a
96 POI for indirect interconnection. As explained above, AT&T and SBC will not
97 have a single POI for the exchange of traffic via indirect interconnection. Staff's
98 recommendation for Section 3.2.5.2 reads as follows:

99 AT&T may, where it makes arrangements with a third
100 party to do so, provide facilities on its side of the POI using
101 a third party's tandem switch or other facilities. AT&T,
102 however, remains responsible for the facilities on its side if
103 the POI and for ensuring that any facilities provided by a
104 third party comply with the provisions of this
105 interconnection agreement.

106 Staff's proposed language for Section 3.2.5.2 is unworkable for two
107 reasons. First, the "AT&T POI" only exists with respect to the transiting carrier.
108 Thus, AT&T's obligation under Staff's language "to be responsible for the
109 facilities" is unclear. Second, Staff's recommendation only defines AT&T's

responsibility for facilities on AT&T's side of the POI rather than defining both AT&T's and SBC's obligations across the entire indirect interconnection arrangement.

AT&T's proposed language does not suffer from these problems. AT&T's proposed language works in conjunction with the other interconnection agreement terms and conditions that specify: (1) each party's obligation to provide the facilities on its side of the POI;⁵ (2) that the originating carrier is responsible to compensate the terminating carrier for the functions the terminating carrier provides⁶; and (3) that the originating carrier is to compensate the transiting carrier for the functions the transiting carrier provides.⁷

11. Q. WHAT SHOULD THE COMMISSION DO WITH RESPECT TO ISSUE INTERCONNECTION 1?

A. The Commission should accept the basic conclusion of Staff that AT&T has the right to interconnect indirectly with SBC where SBC elects to have its end office subtend another carrier's tandem, but the Commission should adopt AT&T's contract language to implement the Staff recommendation.

⁵ See Article 4, Section 4.3.1

⁶ See *Id.*

⁷ See Article 21, Section 21.6.2

Issue Interconnection 5.

AT&T Issue: Does AT&T have the right to establish a POI at any technically feasible point on SBC's network and does each originating party have the obligation to transport its traffic to the POI or should the agreement provide certain exemptions from the Act that relieve SBC from its obligation to interconnect at any technically feasible point and to transport its traffic from its originating switch to the POI? (Article 4, Section 4.3.1, including its subsections)

SBC Issue: Are there reasonable limitations on AT&T's right to interconnection with SBC-Illinois free of any charge? For instance, is AT&T entitled to receive expensive interconnection, FX interconnection, and interconnection outside SBC's franchised territory free of charge as discussed further in issues 6-9. (Article 4, Section 4.3.1, including its subsections)

12. Q. ALTHOUGH STAFF DID NOT ACCEPT AT&T'S PROPOSED LANGUAGE FOR ISSUE INTERCONNECTION 5, IS THE RESOLUTION RECOMMENDED BY DR. ZOLNIEREK ACCEPTABLE TO AT&T?

A. Yes. Staff witness Dr. Zolnierек's proposed language implements the interconnection and compensation principles which AT&T advocates.

Issue Interconnection 6: SBC Issue: In one-way trunking architectures, does Ameritech Illinois have an obligation to compensate AT&T for any transport used by AT&T to terminate Local/IntraLATA traffic originated by Ameritech Illinois if AT&T's POI and/or switch is outside the local calling area and the LATA where the call originates?

Issue Interconnection 7: SBC Issue: When AT&T has requested a POI located outside the local calling area of Ameritech Illinois' end user originating the call, should AT&T be financially responsible for the transport outside the local calling area for Local/IntraLATA traffic originated by Ameritech Illinois.

13. Q. ALTHOUGH STAFF DID NOT ACCEPT AT&T'S PROPOSED LANGUAGE FOR ISSUES INTERCONNECTION 6 AND 7, IS THE RESOLUTION RECOMMENDED BY DR. ZOLNIEREK FOR THESE ISSUES ACCEPTABLE TO AT&T?

A. Yes, Dr. Zolnierек's recommendation for Issues Interconnection 6 and 7 is acceptable to AT&T. That recommendation is to reject SBC's proposed language

for Sections 4.3.2.1, 4.3.3, 4.3.3.1 and 4.3.3.2, and to adopt SBC's proposed language for Section 4.3.1 which excludes AT&T's proposed limiting language.

Issue Interconnection 9: SBC Issue: Should AT&T offer a POI within SBC's franchise area, to trade SBC local/intraLATA traffic?

14. Q. DR. ZOLNIEREK HAS RECOMMENDED THAT THE COMMISSION ADOPT SBC'S PROPOSED LANGUAGE FOR SECTION 4.3.1 ON THIS ISSUE. HOW DOES SBC'S PROPOSED LANGUAGE READ?

A. "AT&T must establish one or more POI(s) within the operating territory in the LATA where SBC Illinois operates as an incumbent LEC."

15. Q. IS THERE A PROBLEM WITH THE STAFF'S RECOMMENDATION TO ADOPT SBC'S CONTRACT LANGUAGE?

A. Yes. The Staff's recommendation for this Issue Interconnection 9 completely undoes the Staff's recommendation for Issue Interconnection 1. The requirement that AT&T establish *its own* POI within the operating territory in the LATA where SBC Illinois operates as an incumbent LEC does not permit AT&T to exchange traffic with SBC using the transit services of a third party carrier that has *its own* POI with SBC. As we have explained above under Issue Interconnection 1, where two parties interconnect indirectly, they do not have a (direct) POI. Rather, traffic is exchanged across the POIs that each carrier has with the transiting carrier. If the inconsistency between Staff's recommendations for Issues Interconnection 1 and 9 is left uncorrected, AT&T will be unable to indirectly interconnect with SBC as AT&T would otherwise be permitted under the Staff's recommendation for Issue Interconnection 1.

181 **16. Q. IS THE STAFF'S RECOMMENDATION FOR ISSUE**
182 **INTERCONNECTION 9 COMPLETELY WRONG?**

183 **A.** No, not at all. Where AT&T directly interconnects with SBC, as the case will be
184 everywhere except for the four cases of indirect interconnection noted in Mr.
185 Mindell's testimony⁸, AT&T agrees that its POI will be on SBC's network within
186 SBC's incumbent operating territory. AT&T simply objects that SBC's proposed
187 language be applicable to indirect interconnection, because SBC's proposed
188 language would preclude all such arrangements.

189 **17. Q. DOES AT&T HAVE NEW PROPOSED LANGUAGE THAT WOULD**
190 **MODIFY STAFF'S PROPOSED LANGUAGE IN ORDER TO**
191 **APPROPRIATELY IMPLEMENT STAFF'S RECOMMENDATION?**

192 **A.** Yes. If the Commission ordered the following phrase to be inserted at the
193 beginning of SBC's proposed language, this issue would be resolved to AT&T's
194 satisfaction: "Except where AT&T elects to indirectly interconnect with SBC
195 pursuant to Section 3.2.5.1".

196 **18. Q. IN HIS TESTIMONY, STAFF WITNESS DR. ZOLNIEREK RAISED A**
197 **CONCERN WITH REQUIRING SBC TO "BUILD FACILITIES IN**
198 **ANOTHER ILEC'S TERRITORY WHERE SBC CURRENTLY HAS NO**
199 **FACILITIES." DOES AT&T PROPOSED REVISION ADDRESS**
200 **STAFF'S CONCERN?**

201 **A.** Yes. First, where AT&T directly interconnects with SBC, AT&T has agreed that
202 its POI will be on SBC's network in SBC's operating territory. Second, where
203 AT&T indirectly interconnects with SBC, SBC would exchange traffic with

⁸ On page 39 of the direct testimony of SBC's witness, Mr. Mindell, he asserts that there are four SBC end offices in Illinois that subtend Verizon tandems.

AT&T at the POI that the transiting carrier has established with SBC on SBC's network in SBC operating territory. In neither case, would SBC be required to build facilities in another ILEC's territory. With AT&T's newly proposed insertion, the requirement SBC is seeking under Section 4.3.1 is satisfied without limiting AT&T's right to indirectly interconnect with SBC as Staff recommends under Issue Interconnection 1.

III. INTERCARRIER COMPENSATION ISSUES

Issue IC 2(a): Can the terminating Party charge exchange access to the originating Party for traffic terminating within the originating Party's local calling area? (Article 21, Section 21.2.7)

19. Q. PLEASE RESPOND TO DR. ZOLNIEREK'S TESTIMONY THAT ATTCI'S RECOMMENDATION THAT LOCAL CALLS BE DEFINED ACCORDING TO THE ORIGINATING PARTY'S TARIFFED LOCAL CALLING AREA WOULD CAUSE CONFUSION IN THE AREA OF INTERCARRIER COMPENSATION AND IS THEREFORE UNWORKABLE.

A. The Florida Public Service Commission recently found otherwise based on its investigation into the appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996. In its Order No. PSC-02-1248-FOF-TP on Reciprocal Compensation in Docket No. 000075-TP, the Florida Commission ruled that the originating carrier's local calling area should be defined as the default local calling area for purposes of reciprocal compensation if the carriers are unable to agree upon another

arrangement.⁹ In January 2003, the Florida Commission denied Motions for
Reconsideration regarding its definition of local calling area.¹⁰

**20. Q. DOES ADOPTION OF DIFFERENT CALLING AREAS FOR
RECIPROCAL COMPENSATION PURPOSES NECESSARILY CAUSE
CONFUSION IN BILLING RECIPROCAL COMPENSATION?**

A. No. In its *Reciprocal Compensation Order*, the Florida Commission cited to
BellSouth witness Shiroishi's testimony that:

BellSouth's position is that, for purposes of determining the applicability
of reciprocal compensation, a "local calling area" can be defined as
mutually agreed to by the parties and pursuant to the terms and conditions
contained in the parties' negotiated interconnection agreement with the
originating Party's local calling area determining the intercarrier
compensation between the parties. BellSouth currently has the
arrangement described above in many of its interconnection agreements,
and is able to implement such arrangement [sic] through the use of billing
factors. These factors allow the originating carrier to report to the
terminating carrier the percent of usage that is interstate, intrastate, and
local.¹¹

Thus, the Florida Commission has concluded that a system of reciprocal
compensation based on the originating carrier's local calling area is workable
without creating undue confusion.

⁹ *In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996, ORDER ON RECIPROCAL COMPENSATION*, Docket No. 000075-TP (Phases II and IIA), Order No. PSC-02-1248-FOF-TP, September 10, 2002, page 51 ("*Reciprocal Compensation Order*").

¹⁰ *In re: Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996, ORDER DENYING MOTIONS FOR RECONSIDERATION*, Docket No. 000075-TP, Order No. PSC-03-0059-FOF-TP, January 8, 2003, page 15.

¹¹ *Reciprocal Compensation Order*, p. 44 (emphasis added).

248 **21. Q. IS THE PUBLIC INTEREST SERVED BY A REQUIREMENT TO**
249 **MIRROR SBC ILLINOIS' LOCAL CALLING AREAS?**

250 **A.** No. SBC Illinois' local calling areas predate the Act and are rooted in SBC
251 Illinois' legacy network architecture and monopoly era regulation. They were
252 established largely before anyone envisioned competition for local service, and
253 CLECs should not be saddled with "cloning" SBC Illinois' historical local calling
254 areas in the provision of local telecommunications services.

255 **22. Q. PLEASE RESPOND TO DR. ZOLNIEREK'S TESTIMONY AT PAGE 61**
256 **THAT INTERCARRIER COMPENSATION RATES WOULD NOT BE**
257 **SYMMETRICAL IF THE COMMISSION ADOPTED ATTCI'S**
258 **PROPOSED LANGUAGE.**

259 **A.** Dr. Zolnierrek discusses a hypothetical example of a call between locations X and
260 Y and states the intercarrier compensation rates would not be symmetric if
261 carriers have different local calling areas. He gives the example of SBC Illinois
262 originating a call from X to Y and rating the call as local and subject to reciprocal
263 compensation, while if ATTCI originated the call from X to Y, the call would be
264 rated as toll subject to long distance access charges. We disagree with Dr.
265 Zolnierrek's conclusions. Reciprocal compensation rates are not affected by
266 whether a call is local or toll. The amount of intercarrier compensation that a
267 LEC pays or receives can change based on whether the call is local (reciprocal
268 compensation) or toll (access charges), but the rates themselves do not change.
269 Therefore, adoption of different local calling areas by different LECs does not
270 cause the reciprocal compensation rates to be asymmetrical. Moreover, the
271 reciprocal compensation rate itself that either carrier charges the other, when

applicable, will be the same for each carrier, based on the functions provided by the terminating carrier. Thus, the rate and the application of the rate are both symmetrical.

23. Q. PLEASE COMMENT ON DR. ZOLNIEREK’S STATEMENT ON PAGE 61 THAT “TYING INTERCARRIER COMPENSATION TO INCREASINGLY MULTIPLE AND VARYING LOCAL AND LONG DISTANCE DEMARCATIONS IS UNWORKABLE”.

A. Dr. Zolnierек bases his conclusion on his belief that “retail and long distance traffic is already and will continue to become increasingly indistinguishable as carriers develop bundled packages of local and long distance service.” From this premise, he concludes, “[t]herefore, tying intercarrier compensation to increasingly multiple and varying retail local and long distance demarcations is unworkable.” However, requiring the parties to use only SBC Illinois’ local calling areas for reciprocal compensation purposes stifles the development of the competitive offerings and bundled packages of service cited by Dr. Zolnierек. It is hard to see how CLECs can create new and innovative service bundles if they are saddled with “cloning” SBC Illinois’ historical local calling areas in the provision of local telecommunications services. Thus, the very market driven demand for new and creative service bundles cited by Dr. Zolnierек in fact supports the need for ATTCI’s language in Section 21.2.7 defining local calls for intercarrier compensation purposes as “traffic that originates and terminates

within the originating Party's tariffed local calling area . . . based on the
originating and terminating NPA-NXXs of the call."¹²

**24. Q. IS IT ATT&T'S POSITION THAT DR. ZOLNIEREK'S
RECOMMENDATION ON THE ISSUE OF WHETHER TRAFFIC THAT
ORIGINATES AND TERMINATES WITHIN THE ORIGINATING
CARRIER'S LOCAL CALLING AREA IS SUBJECT TO RECIPROCAL
COMPENSATION IS INCONSISTENT WITH THE LAW?**

A. Yes. As we indicated in our direct testimony, AT&T's legal position is that only
toll traffic (i.e., traffic that has a separate charge for the inter-exchange portion of
the call) is subject to the Section 251(g) "carve out." Since traffic that originates
and terminates within the originating carrier's local calling area is not a toll call,
such traffic is not 'carved out' from reciprocal compensation. Traffic that is not
carved out is expressly subject to reciprocal compensation, pursuant to 47 C.F.R.
51.701.

25. Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE IC 2(a)?

A. Dr. Zolnerek's testimony notwithstanding, we continue to believe that the
Commission should resolve this issue as we recommended in our direct
testimony. First, the Commission should find that neither party can charge
exchange access to the other party for traffic terminating within the originating
party's local calling area. As explained above, calls terminating within the
originating party's local calling area are not toll calls. Therefore, such traffic

¹² The other solution to the increasingly indistinguishable nature of retail and long distance traffic cited by Dr. Zolnerek, is to simply implement LATA-wide reciprocal compensation. This solution, as well, provides for symmetrical compensation and supports the development of competitive offerings.

should be subject to reciprocal compensation and not to access charges. Second, the Commission should adopt ATTCI's language for Article 21, Section 21.2.7: "Reciprocal Compensation between the Parties shall be based on the originating carrier's tariffed local calling area." The Commission should reject SBC Illinois' competing language.

Issue IC 2(b): How should ISP-bound, FX traffic be compensated pursuant to the rules established by the FCC in the ISP Remand Order? (Article 21, Sections 21.2.7 and 21.2.8)
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26. Q. IS DR. ZOLNIEREK'S RECOMMENDATION THAT THE PARTIES EXCHANGE ISP-BOUND FX AND FX-LIKE TRAFFIC ON A BILL AND KEEP BASIS "BOTH CONSISTENT WITH THE FCC'S INTERIM RECIPROCAL COMPENSATION RULES AND FCC POLICY REGARDING COMPENSATION FOR ISP-BOUND TRAFFIC RECIPROCAL COMPENSATION RATES" AS HE CONTENDS IT IS AT PAGE 67 OF HIS VERIFIED STATEMENT?

A. No, his recommendation is absolutely not consistent with the FCC's policy and rules. Dr. Zolnierrek (1) cites to paragraph 95 in the FCC's *ISP Remand Order* as support for his recommendation; (2) states that the "Commission has consistently ruled in recent orders that FX and FX-like traffic is subject to bill and keep arrangements"; and (3) states that "SBC's mirroring proposal, which calls for FX or FX-like ISP-bound traffic reciprocal compensation rates that mirror FX or FX-like voice reciprocal compensation rates, is both consistent with the FCC's reciprocal compensation rules and FCC policy regarding ISP-bound traffic reciprocal compensation rates." (ICC Staff Exhibit 1.0, pp. 66-67)

27. Q. IS PARAGRAPH 95 OF THE FCC'S *ISP REMAND ORDER* DISPOSITIVE OF THIS ISSUE?

339 A. No. The FCC establishes the circumstances under which a bill and keep
340 arrangement would apply in footnote 152 to paragraph 80 of the *ISP Remand*
341 *Order*. The relevant text of paragraph 80 reads:

342 We also clarify that, because the rates set forth above are *caps* on
343 intercarrier compensation, they have no effect to the extent that states have
344 ordered LECs to exchange ISP-bound traffic either at rates below the caps
345 we adopt here or on a bill and keep basis (or otherwise have not required
346 payment of compensation for this traffic).fn 152

347 Footnote 152 further clarifies:

348 Thus if a state has ordered all LECs to exchange ISP-bound traffic on a
349 bill and keep basis, or if a state has ordered bill and keep for ISP-bound
350 traffic in a particular arbitration, those LECs subject to the state order
351 would continue to exchange ISP-bound traffic on a bill and keep basis.

352 Thus, it is clear that bill and keep applies to ISP-bound traffic in only two
353 instances: (1) if the state had ordered all LECs to exchange ISP-bound traffic
354 under a bill and keep arrangement prior to the *ISP Remand Order*, then such bill
355 and keep arrangement would apply to all LECs on a going forward basis; or (2) if
356 the state had ordered bill and keep in a particular arbitration(s) prior to the *ISP*
357 *Remand Order*, then bill and keep would apply to the particular LEC(s) that was
358 (were) the subject(s) of the particular arbitration(s). The FCC was very clear that
359 the transitional rates it was establishing going forward were rate caps and thus
360 they would have no effect to the extent the states had *previously* adopted rates
361 below the caps.

362 Neither of these two instances applies to ATTCL. Prior to the *ISP Remand*
363 *Order*, this Commission had neither ordered that all LECs exchange ISP-bound

364 traffic on a bill and keep basis, nor had it imposed bill and keep on AT&T.
365 Further, the Commission cannot now impose a bill and keep regime on AT&T
366 for ISP-bound traffic because the FCC has unequivocally preempted the states on
367 ISP-bound traffic. In paragraph 1 of its *ISP Remand Order*, the FCC reaffirmed
368 its previous conclusion in its *Declaratory Ruling* that traffic delivered to an ISP is
369 predominantly interstate access traffic subject to its jurisdiction under Section 201
370 of the Telecommunications Act of 1996, and it established an intercarrier
371 compensation mechanism for the exchange of such traffic. In paragraph 82 of the
372 *ISP Remand Order*, the FCC spoke clearly and succinctly: “Because we now
373 exercise our authority under section 201 to determine the appropriate
374 compensation for ISP-bound traffic, however, state Commissions will no longer
375 have authority to address this issue.”¹³ The FCC recently reaffirmed its position
376 that “ISP-bound traffic is jurisdictionally interstate” in *In the Matter of Starpower*
377 *Communications v. Verizon South, Inc. (Starpower II)*, File No. EB-00-MD-20,
378 FCC 02-105 (2002). Also, as recently as April 7, 2003, this preemption was
379 recognized and cited by the Ninth Circuit Court of Appeals in its Opinion in
380 *Pacific Bell v. Pac-West Telecom, Inc.*, 325 F. 3d 1114 (9th Cir. 2003). Finally, as
381 the Oregon Public Utility Commission stated at page 9 in its Order entered May
382 27, 2003, in UM 1058, *In the Matter of the Investigation into the Use of Virtual*
383 *NPA-NXX Calling Patterns*, “Regulation of the terms and conditions in

¹³ *ISP Remand Order* at ¶ 82.

384 interconnection agreements relating to compensation for ISP-bound traffic has
385 been preempted by the FCC from the Commission.”

386 **28. Q. WHAT ABOUT DR. ZOLNIEREK’S POINT THAT THE ILLINOIS**
387 **COMMERCE COMMISSION HAS CONSISTENTLY RULED IN**
388 **RECENT ORDERS THAT FX AND FX-LIKE TRAFFIC IS SUBJECT TO**
389 **BILL AND KEEP ARRANGEMENTS?**

390 **A.** That point is not relevant to the AT&T arbitration. As we explained in the
391 previous answer, prior to the *ISP Remand Order*, this Commission had neither
392 ordered that all LECs exchange ISP-bound traffic on a bill and keep basis, nor had
393 it imposed bill and keep on AT&T. Therefore, irrespective of its rulings in other
394 recent cases, the Commission cannot now impose a bill and keep regime on
395 AT&T for ISP-bound traffic because the FCC has unequivocally preempted the
396 states on ISP-bound traffic, including the intercarrier compensation for such
397 traffic.

398 **29. Q. AT PAGE 64 OF HIS VERIFIED STATEMENT, DR. ZOLNIEREK**
399 **REFERS TO SBC ILLINOIS WITNESS PELLERIN’S TESTIMONY AND**
400 **ARGUMENT “THAT WHEN SBC ELECTS THE FCC RATE CAPS, FX**
401 **OR FX-LIKE ISP-BOUND TRAFFIC SHOULD CONTINUE TO BE**
402 **EXCHANGED UNDER A BILL AND KEEP ARRANGEMENT.” ARE**
403 **SBC ILLINOIS AND ATTCI EXCHANGING FX AND FX-LIKE ISP-**
404 **BOUND TRAFFIC UNDER THE CURRENT INTERCONNECTION**
405 **AGREEMENT BETWEEN THE PARTIES ON A BILL AND KEEP**
406 **BASIS?**

407 **A.** No. AT&TCI and SBC Illinois have not in the past and are not now exchanging
408 FX or FX-like ISP-bound traffic under a bill and keep arrangement.

409 **30. Q. PLEASE COMMENT ON DR. ZOLNIEREK’S STATEMENT AT PAGES**
410 **66-67 THAT “SBC’S MIRRORING PROPOSAL, WHICH CALLS FOR FX**

OR FX-LIKE ISP-BOUND TRAFFIC RECIPROCAL COMPENSATION RATES THAT MIRROR FX OR FX-LIKE VOICE RECIPROCAL COMPENSATION RATES, IS BOTH CONSISTENT WITH THE FCC'S RECIPROCAL COMPENSATION RULES AND FCC POLICY REGARDING ISP-BOUND TRAFFIC RECIPROCAL COMPENSATION RATES".

A. SBC's mirroring proposal is not consistent with the FCC's reciprocal compensation rules or FCC policy regarding reciprocal compensation for ISP-bound traffic and does not support Dr. Zolnierrek's recommendation that the Commission adopt SBC Illinois' proposal to exchange ISP-bound FX or FX-like traffic on a bill and keep basis under the interconnection agreement being arbitrated in this docket. First, ATTCI and SBC Illinois have not in the past and are not now exchanging FX or FX-like ISP-bound traffic under a bill and keep arrangement. Second, prior to the *ISP Remand Order*, this Commission had neither ordered that all LECs exchange ISP-bound traffic on a bill and keep basis, nor had it imposed bill and keep on AT&T. Therefore, it cannot now impose a bill and keep arrangement on the FX or FX-like ISP-bound traffic exchanged between SBC Illinois and ATTCI because the FCC preempted it for ISP-bound traffic. Because SBC Illinois has not yet opted into the *ISP Remand Order's* intercarrier compensation mechanism, ATTCI and SBC Illinois are today exchanging 251(b)(5) traffic, including FX and FX-like traffic voice and ISP-bound traffic, in accordance with paragraph 89 of the *ISP Remand Order* at the reciprocal compensation rates set by this Commission. Pursuant to paragraph 82 of the *ISP Remand Order*, the interim compensation regime the FCC established in the *ISP Remand Order* applies as carriers re-negotiate expired or expiring

interconnection agreements. Therefore, under the new interconnection agreement, until SBC Illinois opts into the compensation regime established in the *ISP Remand Order*, ATTCI and SBC Illinois will continue exchanging 251(b)(5) traffic, including FX and FX-like voice and ISP-bound traffic in accordance with paragraph 89 of the *ISP Remand Order* at the reciprocal compensation rates set by this Commission.

Once SBC Illinois opts into the compensation regime established in the *ISP Remand Order*, then ATTCI and SBC will exchange ISP-bound traffic, as such traffic is defined in the *ISP Remand Order*, in accordance with paragraph 89 of the *ISP Remand Order*, at the applicable rate cap specified in that Order.

Therefore, in no case, either before or after SBC Illinois opts into the compensation regime established in the *ISP Remand Order*, do the FCC's reciprocal compensation rules or FCC policy regarding ISP-bound traffic reciprocal compensation support Dr. Zolnierrek's recommendation that the Commission adopt SBC Illinois' proposal to exchange ISP-bound FX or FX-like traffic on a bill and keep basis.

31. Q. DO YOU HAVE ANY OTHER COMMENTS ON DR. ZOLNIEREK'S RECOMMENDATION THAT THE COMMISSION ADOPT SBC'S MIRRORING PROPOSAL?

A. Yes. As we explained in our direct testimony at pages 122-123, SBC Illinois' mirroring proposal is based on faulty reasoning and is incorrect. The mirroring rule as stated in paragraph 89 of the FCC's *ISP Remand Order* is:

For those incumbent LECs that choose *not* to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts. This “mirroring” rule insures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic. (emphasis in original)

Apparently, Dr. Zolnierек believes that if this Commission (1) finds that voice FX and FX-like traffic is an exchange service but is not subject to the Section 251(b)(5) reciprocal compensation requirement, and (2) adopts a bill and keep regime for such voice FX traffic, then the FCC’s “mirroring” rule somehow compels the same bill and keep regime for ISP-bound FX traffic. Dr. Zolnierек is incorrect.

32. Q. PLEASE EXPLAIN WHY DR. ZOLNIERЕК IS INCORRECT.

A. If the Commission were to find voice FX traffic is not subject to Section 251(b)(5)’s reciprocal compensation requirement, then such traffic would not be relevant to the “mirroring” rule. The “mirroring” rule explicitly requires that “incumbent LECs pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.” Thus, if the Commission finds that voice FX and FX-like traffic is not section 251(b)(5) traffic, it is, by definition, not relevant to the “mirroring” rule. Accordingly, the FCC’s mirroring rule does not support Dr. Zolnierек’s recommendation that the Commission should adopt bill and keep treatment for ISP-bound FX and FX-like traffic if it adopts “bill and keep” treatment for voice FX and FX-like traffic that the Commission finds is not subject to Section 251(b)(5).

33. Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE IC 2(B)?

A. Having considered Staff's testimony on this issue, we continue to stand by our original recommendation. The Commission should confirm that all ISP-bound traffic, including FX and FX-like traffic, is subject to the FCC's jurisdiction and the intercarrier compensation mechanism set forth by the FCC in the *ISP Remand Order*. Specifically, the Commission should find that absent SBC Illinois' offer to exchange traffic at the rate caps specified by the FCC in the *ISP Remand Order*, the existing Commission-approved reciprocal compensation rates apply to ISP-bound traffic, including ISP-bound FX and FX-like traffic, exchanged between ATTCI and SBC Illinois. Further, the Commission should find that when SBC Illinois opts into the rate caps specified by the FCC in the *ISP Remand Order*, then all ISP-bound traffic, including ISP-bound FX and FX-like traffic, exchanged between ATTCI and SBC Illinois will be subject to the intercarrier compensation mechanism specified in the *ISP Remand Order*.

Issue IC 2(c): AT&T Issue: Should Non-ISP-bound FX-like traffic be compensable pursuant to the reciprocal compensation provisions of Section 251(b)(5) of the Act? (Article 21, Sections 21.2.7 and 21.2.8)

SBC Issue: Should local calls be defined as calls that must originate and terminate to End Users physically located within the same common or mandatory local calling area? Article 21, Sections 21.2.7 and 21.2.8)

34. Q. PLEASE COMMENT ON DR. ZOLNIEREK'S TESTIMONY AT PAGE 71 OF HIS VERIFIED STATEMENT THAT AT&T'S READING OF THE FCC RULES AND POLICY CONFLICTS WITH THE FCC'S RECIPROCAL COMPENSATION RULES.

507 A. Dr. Zolnierек bases his statement on his reading of part of paragraph 37 of the *ISP*
508 *Remand Order*. Specifically, he focuses on the phrase “*in order to connect calls*
509 *that travel to points – both interstate and intrastate – beyond the local exchange*”
510 and concludes “the FCC identifies access services to IXCс and to information
511 service providers by the fact that these services connect calls that travel to points
512 – both interstate and intrastate – beyond the local exchange.” In his interpretation
513 of paragraph 37 Dr. Zolnierек confuses the access services used by interexchange
514 carriers (“IXCs”) with the telephone exchange services used by end users. As this
515 Commission knows, local exchange service subscribers in Illinois can make “calls
516 beyond the local exchange” as part of their flat rate local calling area or with
517 EAS, and paragraph 37 does not change that and require that all such calls be
518 treated as toll calls. Clearly, the Section 251(g) carve out applies to *access*
519 *services*, not *end user services*.

520 The FCC, in paragraph 37 of the *ISP Remand Order*, explained that “[a]ll
521 of the services specified in section 251(g) have one thing in common: they are all
522 *access services or services associated with access*.” (emphasis added) The
523 FCC’s interpretation of the Section 251(g) carve out becomes clear when one
524 looks at the complete text of paragraph 37:

525 This limitation in section 251(g) makes sense when viewed in the overall
526 context of the statute. All of the services specified in section 251(g) have
527 one thing in common: they are all access services or services associated
528 with access. *Before Congress enacted the 1996 Act, LECs provided*
529 *access services to IXCс and to information service providers in order to*
530 *connect calls that travel to points – both interstate and intrastate – beyond*

531 *the local exchange.* In turn, both the Commission and the states had in
532 place access regimes applicable to this traffic, which they have continued
533 to modify over time. *It makes sense that Congress did not intend to disrupt*
534 *these pre-existing relationships. Accordingly, Congress excluded all such*
535 *access traffic from the purview of section 251(b)(5).* (emphasis added,
536 footnotes omitted)

537 When taken in context, it is clear that Section 251(g) “grandfathered” pre-existing
538 Federal compensation rules governing exchange access and information access
539 traffic between local exchange carriers and interexchange carriers for toll services
540 provided by interexchange carriers, and that it does not apply to ATTCI’s end
541 user FX-like local service option, which was not in existence in February 1996
542 when Congress passed the 1996 Act. (We discussed this point at greater length in
543 our direct testimony.)

544 **35. Q. IS ATTCI’S PROPOSED INTERPRETATION OF THE PROPER**
545 **APPLICATION OF SECTION 251(b)(5) UNWORKABLE, AS DR.**
546 **ZOLNIEREK OPINES AT PAGE 72 OF HIS VERIFIED STATEMENT?**

547 **A.** No, it is not. While it is ATTCI’s position that, as a matter of law, all FX and FX-
548 like traffic is subject to reciprocal compensation, as a practical matter, the
549 characterization of traffic for rating purposes is based on the NPA-NXX codes of
550 the originating and terminating telephone numbers. As we explained in our direct
551 testimony at pages 115-116, telecommunications billing (whether between a
552 telecommunications provider and its retail customers or between two
553 telecommunications companies) is based upon electronically generated and

554 recorded data known as AMA (Automated Message Accounting) information.¹⁴
555 AMA records are automatically generated by telecommunications switches and
556 include the information necessary to allow the originating and terminating carriers
557 to generate billings for each call, *i.e.*, originating and terminating telephone
558 numbers, switch identification, and the length of the call. Interconnection billings
559 for reciprocal compensation, access charges and end-users are based on these
560 AMA records. Switches have been designed by their manufacturers to collect this
561 information and the carriers' billing processes and systems have been designed to
562 allow the carriers to automatically and efficiently rate millions of telephone calls
563 each month, and to bill that traffic to retail customers and to other carriers. There
564 is no other workable method in existence at this time. Thus, as a practical matter,
565 the parties would continue using the methodology that is in place today.
566 Specifically, the parties would use the originating and terminating NPA-NXXs to
567 determine if calls to FX and FX-like arrangements are toll. If they are, they
568 should be handled and rated as toll calls. If, based on the originating and
569 terminating NPA-NXXs they are not toll calls, then they are subject to Section
570 251(b)(5) reciprocal compensation.

571 **36. Q. IS IT APPROPRIATE TO SINGLE OUT ONE SERVICE FOR**
572 **DISPARATE RATING TREATMENT?**

¹⁴ AMA is the automated message accounting structure included in the switch that records telecommunication message information. AMA format is specified in Telcordia standard GR-1100-CORE, which defines the industry standard for message recording.

573 A. No, it is not. If the Commission decides the jurisdiction test the industry has
574 historically used to rate calls for wholesale and retail billing purposes is now
575 inappropriate, and decides to use the physical location of the calling and called
576 parties to rate calls, it should apply the same standard to all services, and not to
577 just a subset of calls that happens to be favorable to SBC Illinois. There can be no
578 principled reason to single out for special treatment one type of service where the
579 calling and/or called number does match the customer's physical location and to
580 ignore all other similarly situated services. If the Commission finds that it is
581 appropriate to use the physical locations of the customers to rate calls, this finding
582 should apply not only to Foreign Exchange Service, but also to Foreign Central
583 Office Service, Answer Line Service, Centrex and PBX Off Premise Extensions,
584 Call Forwarding, Remote Call Forwarding and calls between private networks
585 and the public switched network. Categorizing and rating calls based on the
586 physical location of the customer's premise, rather than the NPA-NXX
587 information would be a significant departure from the efficient and accurate
588 process currently in place and used by the industry nationwide, and would impose
589 significant and unnecessary costs on AT&T and other CLECs. In fact, at present,
590 there is no viable alternative to the current system under which carriers rate calls
591 by comparing the originating and terminating NPA-NXXs.

592 37. Q. **DO YOU AGREE WITH DR. ZOLNIEREK'S CHARACTERIZATION OF**
593 **THE FCC'S DECISION ON THIS ISSUE IN THE VIRGINIA**
594 **ARBITRATION DECISION?**

595 A. No. Dr. Zolnierrek suggests at page 73 of his verified statement that the FCC
596 decided to treat FX or FX-like traffic similar to 251(b)(5) traffic because, absent a
597 workable alternative, such treatment was appropriate. He then goes on to say that
598 in this case, however, SBC has presented a proposal that appears on its face to be
599 workable and therefore, the circumstances necessitating the FCC's decision in the
600 Virginia Arbitration Decision presumably do not arise here.

601 38. Q. **DID MESSRS. TALBOTT AND SCHELL PARTICIPATE IN THE**
602 **VIRGINIA ARBITRATION PROCEEDING BEFORE THE FCC?**

603 A. Yes, we submitted testimony and testified on behalf of AT&T.

604 39. Q. **PLEASE EXPLAIN WHY YOU DISAGREE WITH DR. ZOLNIEREK'S**
605 **CHARACTERIZATION OF THE FCC'S DECISION IN THE VIRGINIA**
606 **ARBITRATION.**

607 A. First, the underlying facts and circumstances were extensively discussed in that
608 case. ~~Wireline Competition Bureau representatives extensively questioned the~~
609 ~~witnesses for Verizon, AT&T, Cox, and WorldCom on this issue during the~~
610 ~~proceeding and allowed the witnesses to interact and at times to comment on each~~
611 ~~other's statements and on drawings which the witnesses made on easel charts~~
612 ~~describing calls delivered to FX and FX-like arrangements. The Bureau~~
613 ~~representatives demonstrated a good understanding of all of the issues including~~
614 ~~the competition between Verizon's FX service and the CLECs' FX-like~~
615 ~~arrangements. Of course, all of this was in addition to the cross-examination.~~

616 Second, if the FCC believed that it was appropriate to change the call
617 rating methodology for one subset of services, namely, the CLECs' FX-like
618 arrangements, we believe the FCC could have directed the parties to develop and
619 use factors to identify non-local FX-like traffic based on the physical locations of
620 the FX-like subscriber. I believe the language in paragraph 301 of the Virginia
621 Arbitration Decision indicates the FCC was appropriately considering how
622 Verizon's proposal to use the physical location of the calling and called parties to
623 rate calls could be applied equally to all services, and not just one subset that
624 benefited only Verizon, and decided, as a practical matter, there was simply no
625 way to do it:

626 We agree with the petitioners that Verizon has offered no viable
627 alternative to the current system, under which carriers rate calls by
628 comparing the originating and terminating NPA-NXX codes. We
629 therefore accept the petitioners' proposed language and reject Verizon's
630 language that would rate calls according to their geographical end points.
631 Verizon concedes that NPA-NXX rating is the established compensation
632 mechanism not only for itself, but industry-wide. The parties all agree that
633 rating calls by their geographical starting and ending points raises billing
634 and technical issues that have no concrete, workable solutions at this time.
635 (footnotes omitted)

636 In our opinion, the FCC would not have included the last sentence if the parties
637 only needed to develop and implement a factor to identify FX-like traffic. We
638 believe the simple fact is the FCC saw how inequitable and unreasonable it would
639 be to change the call rating methodology in one, and only one situation, and
640 because, as a practical matter, there was no way to rate all services based on the

physical locations of the customers, the FCC determined that FX traffic should continue to be rated based on the originating and terminating NPA-NXX codes.

40. Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. Having considered Dr. Zolnierrek's testimony, we continue to stand by our original recommendation. This Commission should come to the same conclusion as the FCC did. That is, it is appropriate to use the originating and terminating NPA-NXX codes to rate voice FX and FX-like calls. The Commission should find that while an end-to-end analysis has been used by the FCC and state commissions to *establish interstate versus intrastate jurisdiction*, NPA-NXX codes have been and continue to be used to rate and bill calls, and there is no public policy reason to change that arrangement now for only one subset of traffic.

<p>Issue IC 2(d): If the ICC adopts SBC's proposal for FX-like traffic, under Issue 2, are specific recording processes warranted for FX traffic? (Article 21, Section 21.7.1 and 21.7.3 and subsections)</p>
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41. Q. HAS THE TEXAS PUBLIC UTILITY COMMISSION ORDERED AT&T TO TRACK FX OR FX-LIKE TRAFFIC AS STATED AT PAGE 76 OF DR. ZOLNIEREK'S VERIFIED STATEMENT?

A. No. While the Texas arbitrators made this finding, it has not been approved by the Commissioners and is not a final decision. In fact, it has been 10 months since the arbitrators' award came out and there has been no action on it by the Commissioners. Consequently, AT&T has not been required to implement the order.

664 **42. Q. AT PAGE 76 OF HIS STATEMENT, DR. ZOLNIEREK STATES “IT IS**
665 **DIFFICULT TO IMAGINE THAT AT&T DOESN’T SOMEHOW KEEP**
666 **TRACK OF TELEPHONE NUMBER ASSIGNMENTS THAT DO NOT**
667 **ALIGN WITH THE REQUESTING CUSTOMER’S PHYSICAL RATE**
668 **CENTER.” PLEASE COMMENT.**

669 **A.** As we explained in our direct testimony at pages 124-125, ATTCI’s FX-like
670 arrangement is not a separate service like SBC Illinois’ FX service, but is a non-
671 chargeable service provisioning option. Consequently, ATTCI has no reason to,
672 and does not, separately identify FX-like customers or the traffic directed to FX-
673 like customers within its systems and processes, and could not do so without
674 incurring significant expense.

675 ATTCI’s FX-like local service option is comprised of a single switch (a
676 single wire center) and the local loop. There is no dedicated interoffice facility
677 component and there is no foreign switch as there are with SBC Illinois’ FX
678 service. With ATTCI’s network architecture, dial tone is provided by the
679 customer’s native switch, not a foreign switch. Since ATTCI’s switches serve a
680 much broader geographic area than do SBC Illinois’ individual local switches,
681 ATTCI is able to terminate traffic to customers within different SBC Illinois
682 legacy rate centers at comparable cost. In fact, as shown on AT&T Exhibit 2.11,
683 TCG’s switches serve an average of 62 legacy rate centers. Therefore, the NPA-
684 NXX codes associated with 62 legacy SBC Illinois rate centers all reside in the
685 same ATTCI switch. Hence, from the perspective of ATTCI’s network, there is
686 no difference in function or cost to terminate a call in one of the 62 rate centers
687 versus another. Therefore, unlike SBC Illinois, ATTCI has had no business reason

688 to track the alignment of number assignments with customer locations, and does
689 not identify or maintain a separate record of FX-like customers and numbers, and
690 does not segregate FX-like traffic or track it separately.

691 **43. Q. AT PAGE 77 OF HIS VERIFIED STATEMENT, DR. ZOLNIEREK**
692 **STATES THAT IF THE COMMISSION ORDERS BILL AND KEEP FOR**
693 **ALL FX AND FX-LIKE TRAFFIC THERE SHOULD BE NO COSTS**
694 **ASSOCIATED WITH SEPARATING SUCH TRAFFIC FOR RECORD**
695 **KEEPING PURPOSES. DO YOU AGREE?**

696 **A.** Absolutely not. At pages 128-130 of our direct testimony, we explained the
697 changes ATTCI would have to make in its end user ordering and carrier access
698 billing systems and the development and monthly recurring cost of the changes
699 necessary to enable ATTCI to identify and maintain a separate record of FX-like
700 customers and numbers and to segregate and track FX-like traffic separately.
701 These costs do not depend on whether AT&T is tracking voice or ISP-bound FX-
702 like traffic or both. The changes in the End User Ordering System are estimated
703 to have a one-time systems development cost of \$500,000 and the changes for the
704 AMPS and CRANE systems are estimated to have a one-time development cost
705 of \$3 million to \$4 million. In addition, ATTCI estimates that it would have a
706 recurring monthly cost of \$325,000.

707 **44. Q. IF THE COMMISSION NEVERTHELESS DECIDES TO ADOPT SBC**
708 **ILLINOIS' LOCAL CALL AND/OR FX DEFINITIONS AND**
709 **DETERMINES THAT VOICE FX/FX-LIKE TRAFFIC OR ALL FX/FX-**
710 **LIKE TRAFFIC IS SUBJECT TO BILL AND KEEP, HOW SHOULD**
711 **SUCH TRAFFIC BE IDENTIFIED?**

712 **A.** As we explained in our direct testimony, in light of the pendency of the FCC's
713 *Intercarrier Compensation NPRM*, any change in how traffic is rated is likely to
714 be short-lived given the comprehensive changes being examined by the FCC in
715 that Docket that could completely supersede a state-imposed rating system. Thus,
716 any change implemented by this Commission could be a short term change in
717 industry practice that could become obsolete once the FCC rules on a new
718 intercarrier compensation regime. Given this possibility, and the significant costs
719 to ATTCI as explained above and in our direct testimony that adoption of SBC's
720 proposed language in Sections 21.7.1, 21.7.1.1 and 21.7.2 would entail, the
721 Commission should make it clear that the parties have a right to use a factor to
722 identify Voice FX/FX-like (or all FX/FX-like traffic, if the Commission so rules).
723 Today, SBC Illinois and ATTCI use similar factors such as PIU (Percent
724 Interstate Usage) and PLU (Percent Local Usage) in their billing processes, and
725 are familiar with the development and usage of such factors.

726 **45. Q. HAS SBC ILLINOIS SUGGESTED THE USE OF A FACTOR?**

727 **A.** Yes. SBC Illinois' proposed language in Section 21.7.3 states "[a]lternatively, the
728 Parties may mutually agree to assign a Percentage of FX Usage (PFX) which shall
729 represent the estimated percentage of minutes of use that is attributable to all FX
730 traffic in a given month."

731 **46. Q. SHOULD THE DECISION TO USE SUCH A FACTOR REQUIRE**
732 **MUTUAL AGREEMENT?**

733 A. No. As we explained above and in our direct testimony, other than incurring
734 significant one-time systems development costs and significant monthly recurring
735 costs, ATTCI has no practical alternative to use of a factor to identify either its
736 monthly voice or all FX-like terminating traffic. SBC Illinois should not be able
737 to hold ATTCI hostage by not agreeing to the use of a factor to identify such
738 traffic, thereby forcing ATTCI to implement a costly and burdensome tracking
739 mechanism for what ATTCI believes will be a relatively short period of time until
740 the FCC rules on a new intercarrier compensation regime in the *Intercarrier*
741 *Compensation NPRM* docket.

742 **47. Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE IC 2(d)?**

743 A. If the Commission decides to adopt SBC Illinois' local call and/or FX definitions,
744 and determines that voice or all FX and FX-like traffic is subject to "bill and
745 keep", then the Commission should direct each party, at its option, to select one of
746 the following methods for identifying its terminating FX or FX-like traffic:

- 747 (1) Identify the actual monthly voice or all FX or FX-like minutes of use
748 based on AMA call records; or
- 749 (2) Develop a Factor based on traffic studies, retail sales of FX lines, or any
750 other reasonable method of estimating the FX or FX-like traffic; or
- 751 (3) Develop a Factor using a traffic sampling methodology such as that set
752 forth in AT&T Exhibit 2.6 that does not require ATTCI to identify each of

its FX-like customer's telephone numbers and track the actual usage for some period of time, which would cause ATTCI to expend the significant one-time development costs discussed above.

Issue IC 2(e): If the ICC adopts SBC's proposal for FX-like traffic, under Issue 2, should there be specific audit provisions in Article 21 for the tracking and exclusion of Foreign Exchange traffic? (Article 21, Section 21.7.2 and subsections)

48. Q. PLEASE COMMENT ON DR. ZOLNIEREK'S RECOMMENDATION THAT THE COMMISSION ADOPT SBC ILLINOIS' PROPOSED AUDIT LANGUAGE.

A. SBC Illinois' audit language in Sections 21.7.1, 21.7.1.1 and 21.7.2 specifically requires identification of all FX ten-digit telephone numbers and segregating and tracking of all FX traffic. Section 21.7.2 provides for "a semi-annual audit of the full ten (10) digit FX Telephone Numbers and minutes of use to those numbers in order to ensure the proper Billing and Keeping of FX traffic consistent with this section." Thus, the terminating carrier would have to segregate and separately track the applicable FX and FX-like traffic and retain written records of all FX/FX-like ten-digit telephone numbers for which "bill and keep" applies for two years from the date the FX/FX-like telephone numbers were assigned. SBC Illinois' language would require the parties to exchange monthly NXX level summaries of the minutes of use to FX/FX-like telephone numbers on its network.

49. Q. CAN ATTCI COMPLY WITH THE AUDIT REQUIREMENTS IN SECTIONS 21.7.1, 21.7.1.1 AND 21.7.2 OF SBC'S PROPOSED LANGUAGE?

A. ATTCI cannot comply with these requirements without significant modifications to its ordering and billing systems and related processes. As we explained in our

778 direct testimony, ATTCI does not identify or maintain a separate record of FX-
779 like customers and numbers, and does not segregate FX-like traffic or track it
780 separately. First, ATTCI would have to identify its embedded base of FX-like
781 customers and their telephone numbers by comparing the rate center associated
782 with each customer's physical service address to the rate center associated with
783 the customer's telephone number(s). If the rate centers are not the same or are not
784 in the same Commission-defined local calling area, the telephone number would
785 be designated as FX-like. The customer's address and telephone number would
786 have to be obtained from the End User Ordering System, and ATTCI would have
787 to "dip" multiple databases, including the LERG (NPA-NXX to Rate Center
788 relationship) and CRANE (Rate Center(s) to local calling area relationship), to
789 make this determination. Then, ATTCI may have to determine which FX-like
790 arrangements are used for ISP-bound versus voice traffic, depending on the
791 resolution of Issue IC 2(b). Going forward, this information would have to be
792 obtained and entered into the End User Ordering System by the service
793 representatives as part of the service order process. ATTCI's End User Ordering
794 System would need to be enhanced to identify separately FX-like customers and
795 to house the customer information needed by downstream systems to properly
796 apply or not apply reciprocal compensation. For example, the data would need to
797 include both the customer's assigned telephone number(s) and a translation
798 telephone number associated with the Rate Center serving the customer's physical
799 location. ATTCI would need to create a table of FX-like telephone numbers and

related information and update such table daily for uploading to AMPS via the common reference tables maintained by CRANE.

Second, ATTCI would have to modify its AMPS billing systems to accept this table and process usage appropriately. AMPS would then need to be further modified so that every terminating message recorded by ATTCI is run against a table of FX-like numbers to determine if the telephone number is an FX-like number that may not be subject to reciprocal compensation. If it is, then AMPS would have to determine if the call is local or non-local based on the originating telephone number and the translation telephone number associated with the customer's physical location. If the call were local, the record would be passed to CABS for reciprocal compensation billing. If the call were not local, the record would be dropped into a separate file and would not be passed to CABS for billing. It should be noted that *every* call record passing through the system would have to go through this discernment step.

50. Q. WHAT IS ATTCI'S ESTIMATE OF THE DEVELOPMENT AND RECURRING MONTHLY COST TO IMPLEMENT THESE CHANGES?

A. As we explained in our direct testimony, the changes in the End User Ordering System are estimated to have a one-time systems development cost of \$500,000 and the changes for the AMPS and CRANE systems are estimated to have a one-time development cost of \$3 million to \$4 million. In addition, ATTCI estimates that it would have a recurring monthly cost of \$325,000. It would be unreasonable for the Commission to require ATTCI to incur this cost simply to

822 meet an audit requirement when SBC Illinois itself has proposed in Section 21.7.3
823 a less costly factor approach to identifying such traffic

824 **51. Q. COULD ATTCI DETERMINE ITS MONTHLY FX-LIKE MINUTES OF**
825 **USE AT A MORE REASONABLE COST USING A FACTOR?**

826 **A.** Yes. As we discussed under Issue IC 2(e) above, ATTCI can use a sampling
827 methodology to develop a percent FX-like factor which represents the estimated
828 percentage of minutes of use attributable to either voice FX-like traffic or to all
829 FX-like traffic, depending on the resolution of Issue IC 2(b). ATTCI would use a
830 statistically valid sampling method that provides a reliable result to develop the
831 factor.

832 **52. Q. IF A FACTOR APPROACH IS USED, WOULD SBC ILLINOIS' AUDIT**
833 **LANGUAGE IN SECTIONS 21.7.1, 21.7.1.1 AND 21.7.2 STILL BE**
834 **APPLICABLE?**

835 **A.** No, that language would not be relevant and should not be adopted by the
836 Commission, because it could be construed by SBC Illinois to require such data
837 even when ATTCI uses a factor approach such as what SBC Illinois itself
838 proposes in Sections 21.7.3 and 21.7.3.1.

839 **53. Q. GIVEN THAT SECTIONS 21.7.1, 21.7.1.1 and 21.7.2 ARE NOT**
840 **APPLICABLE TO ATTCI, ARE THE AUDIT PROVISIONS IN**
841 **SECTIONS 21.7.2.1 AND 21.7.2.2 NECESSARY?**

842 **A.** No. It is ATTCI's position that the audit provisions in Article 1, General Terms
843 and Conditions, Section 32, provide the parties with adequate audit rights and
844 remedies, and that separate, audit provisions for FX and FX-like traffic are simply

845 not necessary. Each party's rights are adequately protected in Section 32.
846 Therefore, the Commission should reject SBC's proposed language in Sections
847 21.7.2.1 and 21.7.2.2.

848 **Issue IC 9: Shall SBC-Illinois be required to make available to ATTCI comparable**
849 **compensation arrangements as those between SBC and other incumbent local exchange**
850 **carriers and competitive local exchange carriers? (Article 21, Section 21.3.7)**

851 **54. Q. WHAT DID STAFF RECOMMEND WITH RESPECT TO ISSUE IC 9?**

852 **A.** Staff witness Dr. Zolnierrek recommended that the Commission reject ATTCI's
853 proposed Article 21, Section 21.3.7.

854 **55. Q. WHAT WAS THE BASIS FOR STAFF'S RECOMMENDATION?**

855 **A.** Dr. Zolnierrek believes that (1) ATTCI's proposed Article 21, Section 21.3.7 is
856 overly broad and would allow ATTCI to obtain intercarrier compensation rates
857 that are above the FCC's prescribed rate caps for ISP-bound traffic, and (2) this
858 type of opt-in arrangement is prohibited by the FCC's *ISP Remand Order*.

859 **56. Q. WAS IT THE INTENTION OF THE LANGUAGE PROPOSED BY ATTCI**
860 **TO OBTAIN HIGHER INTERCARRIER COMPENSATION RATES, AS**
861 **SUGGESTED BY STAFF?**

862 **A.** No. ATTCI proposed its contract language in Article 21, Section 21.3.7 to SBC
863 Illinois in the expectation that ATTCI would have *lower* intercarrier
864 compensation rates in optional and mandatory EAS areas. As we stated in our
865 direct testimony, where SBC Illinois and another ILEC have established optional
866 and mandatory EAS areas, they typically employ "bill and keep" intercarrier

867 compensation mechanisms. On the other hand, where ATTCI and SBC Illinois
868 exchange traffic within established optional and mandatory EAS areas, but across
869 two ILEC territories, SBC Illinois proposes that ATTCI pay exchange access
870 charges to SBC Illinois for such traffic originating on ATTCI's network. ATTCI
871 proposes that, in such cases, ATTCI also be permitted to exchange traffic with
872 SBC Illinois on a bill and keep arrangement. This is not only ATTCI's right
873 under the law, but is it good for the local telephone customers in these areas.

874 **57. Q. IS ATTCI AT A DISADVANTAGE IN COMPETING FOR CUSTOMERS**
875 **IN OPTIONAL AND MANDATORY EAS AREAS?**

876 **A.** Yes. Calls between ILEC customers within established optional and mandatory
877 EAS areas are typically compensated through "bill and keep." Thus, SBC Illinois
878 customers are charged a lower rate to make these calls, since switched access is
879 not being paid. If one of these SBC Illinois customers switches to obtain service
880 from ATTCI, ATTCI would be required to compensate SBC Illinois at exchange
881 access rates. This, in turn, would mean the termination cost of these calls would
882 be substantially higher, for no good reason. Under SBC Illinois' proposal,
883 ATTCI would not have the right to a comparable intercarrier compensation
884 arrangement used by ATTCI's competitors. SBC Illinois is simply trying to
885 preserve its monopoly position in established optional and mandatory EAS areas.
886 SBC Illinois's position should not be adopted.

887 **58. Q. IS ATTCI'S PROPOSED LANGUAGE THE TYPE OF OPT-IN**
888 **PROHIBITED BY THE FCC'S *ISP REMAND ORDER*?**

889 A. No. An intercarrier compensation arrangement that *lowers* compensation rates is
890 not contrary to the *ISP Remand Order*.

891 **59. Q. WOULD ATTCI ACCEPT A MORE NARROW PROVISION?**

892 A. Yes. ATTCI would accept a revision to its proposed Section 21.3.7 so that the
893 opt-in provision would be available only if it results in lower intercarrier
894 compensation rates. We have shown the proposed revised section below with the
895 revision in caps:

896 **21.3.7 SBC will make available to ATTCI a compensation**
897 **arrangement THAT PROVIDES LOWER COMPENSATION**
898 **RATES, INCLUDING BILL AND KEEP, for serving customers in**
899 **any optional or mandatory, one way or two way EAS, including**
900 **ELCS, area serviced by an ILEC or CLEC other than ATTCI, that is**
901 **similar to the corresponding arrangement that SBC-Illinois has with**
902 **that other ILEC or CLEC for serving those customers when ATTCI is**
903 **similarly situated to the other ILEC or CLEC.**

904 **60. Q. DOES ATTCI'S REVISED LANGUAGE FOR SECTION 21.3.7 ADDRESS**
905 **THE STAFF'S STATED CONCERN?**

906 A. Yes. With the revised language proposed by ATTCI, ATTCI would not be able to
907 obtain intercarrier compensation rates that are above the FCC's prescribed rate
908 caps for ISP-bound traffic.

909 **61. Q. HOW SHOULD THE COMMISSION RESOLVE ISSUE IC 9?**

910 A. The Commission should adopt ATTCI's proposed revised language to Section
911 21.3.7.

912 **62. Q. DOES THIS CONCLUDE YOUR REPLY TESTIMONY?**

913 **A.** Yes, it does.